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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

HUGO IVAN SANCHEZ,

Defendant and Appellant.

B218326

(Los Angeles County
Super. Ct. No. VA086577)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A. Torribio, Judge. Reversed and remanded with directions.

Maxine Weksler, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon and Joseph P. Lee, Deputy Attorneys General, for Plaintiff and Respondent.

Hugo Ivan Sanchez was convicted by a jury of assault with a firearm (Pen. Code, § 245, subd. (a)(2)) and shooting at an occupied vehicle (Pen. Code, § 246). The jury also found true related firearm-use and criminal street gang enhancements. Sanchez was sentenced to an aggregate state prison term of 40 years to life.

In his initial appeal we rejected Sanchez's argument his identification as the shooter by two of his victims was made under unduly suggestive circumstances, his challenges to the admissibility and sufficiency of testimony regarding the criminal street gang allegations and his contention he had received ineffective assistance from his trial counsel. (*People v. Sanchez* (Feb. 2, 2009, B197613 [nonpub. opn.].) However, we agreed the trial court had improperly denied Sanchez's motion for discovery of personnel records of Bell Gardens Police Detectives Michael Cox and Mark Cobian under Evidence Code sections 1043 and 1045 and *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*) and conditionally reversed the judgment and remanded for the trial court to conduct in camera review of the requested personnel records for relevance.

Following an in camera review on August 3, 2009, the trial court found there was no discoverable material to be provided to the defense. On appeal Sanchez requests we review the in camera proceedings to determine whether the court properly concluded there was no discoverable material to which he was legally entitled.

We have reviewed the sealed record of the in camera proceedings, which included detailed descriptions of the documents in Detective Cox's personnel files, and conclude the trial court's order complied with all statutory and common law discovery requirements with respect to Detective Cox. (See *Mooc v. Superior Court* (2001) 26 Cal.4th 1216, 1229.) However, nothing in the record before this court indicates the trial court also reviewed the personnel files of Detective Cobian, as we had directed. The minute orders from the trial court proceedings on remand do not state the scope of the review to be conducted (neither detective's name is included in the orders), and the transcript from the in camera proceedings on August 3, 2009 reflects only production by the custodian of records and review by the trial court of Detective Cox's records.

Accordingly, we are obligated to conditionally reverse the judgment once again and to remand the matter for an in camera review of Detective Cobian’s personnel records and for the trial court to conduct any additional proceedings that may be necessary to determine whether the erroneous denial of Sanchez’s discovery motion constituted prejudicial error. (See *People v. Gaines* (2009) 46 Cal.4th 172, 180, 182 [“the proper remedy when a trial court has erroneously rejected a showing of good cause for *Pitchess* discovery and has not reviewed the requested records in camera is not outright reversal, but a conditional reversal with directions to review the requested documents in chambers on remand”; “[t]o obtain relief, then, a defendant who has established that the trial court erred in denying *Pitchess* discovery must also demonstrate a reasonable probability of a different outcome had the evidence been disclosed”].)

DISPOSITION

The judgment is conditionally reversed. On remand the trial court is to conduct an in camera review of Detective Mark Cobian’s personnel records for relevance. If that review reveals no relevant information, the trial court shall reinstate Sanchez’s original judgment of conviction and sentence. If that review reveals relevant information, the trial court must order disclosure, allow Sanchez an opportunity to demonstrate prejudice and order a new trial if there is a reasonable probability the outcome would have been different had the information been disclosed. If Sanchez is unable to show any prejudice, the original judgment is to be reinstated. In all other respects the orders of the trial court and Sanchez’s conviction are affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

ZELON, J.